

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SOUTHWEST KEY PROGRAMS, INC., )  
                                    )  
Plaintiff,                      )  
                                    )  
vs.                              ) No. 3:15-cv-0115-H(BLM)  
                                    )  
CITY OF ESCONDIDO,             )  
                                    )  
Defendants.                    )  
\_\_\_\_\_  
                                    )

PMK 30(B)(6) DEPOSITION OF ALEXIA RODRIGUEZ

San Diego, California

Tuesday, June 28, 2016

Volume 1

Reported by:  
LINDA SILVER RYAN  
CSR No. 9915  
JOB No. 12219



1 APPEARANCES:

2

3 For Plaintiff:

4           ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES  
5           BY: LIZA CRISTOL-DEMAN, ESQ., ESQ.  
6           P.O. Box 686  
7           San Diego, California 92138-7131  
8           (650) 870-0141

9 For Defendant:

10          RUTAN & TUCKER, LLP  
11          Attorneys at Law  
12          BY: MICHAEL RUBIN, ESQ.  
13          BY: ALAN B. FENSTERMACHER, ESQ.  
14          611 Anton Boulevard  
15          Suite 1400  
16          Costa Mesa, California 92626  
17          (714) 641-5100

18 Also Present:

19          MICHAEL McGUINNESS - City of Escondido

20

21

22

23

24

25

1           A     2004.

2           Q     Okay. Keep going.

3           A     General counsel after about five months of being  
4     there, and then about -- so where would that put us, 2006?  
5     Around -- I'm sorry, so 2004 to 2006 I primarily did  
6     general counsel work and then around 2006 I was asked to  
7     be chief operations officer, which is essentially the role  
8     that I'm in right now, but our titles switched to vice  
9     presidents as opposed to chiefs at some point along the  
10   line, maybe about five or six years ago.

11          Q     Change in title, but not in scope of what you do?

12          A     No, sir.

13          Q     Anything else?

14          A     That's it.

15          Q     How did your activities in things that you do  
16     change when you became chief operations officer from those  
17     that they were when you were general counsel?

18          A     So I gave up responsibility of managing the legal  
19     department, and we hired another general counsel to take  
20     my place.

21          Q     Who is that?

22          A     Her name is Rachel Luna. And I focused on  
23     operations of the unaccompanied minor shelters moving  
24     forward.

25          Q     And that was in 2006?

1           A     Approximately.

2           Q     Did your location of your office change?

3           A     No, sir.

4           Q     Did the people you were in charge of change?

5           A     Yes, it did.

6           Q     How did that change?

7           A     So I went from managing two lawyers and a legal  
8           assistant to managing everyone that works in the  
9           unaccompanied minor programs. So it went from maybe  
10          managing three people to managing maybe 500 people.

11          Q     As the chief operations officer, what are your  
12          responsibilities and duties at Southwest Key?

13          A     What were they? Because I'm vice president.

14          Q     Well, you told me that's just a change in title.

15          A     It is.

16          Q     So can I use those interchangeably?

17          A     You can, it just --

18          Q     So I don't have to ask them twice?

19          A     It just throws me off. Yes, that's fine.

20                 So what are they? My responsibility is oversight  
21          of the -- all of the unaccompanied minor shelters  
22          Southwest Key runs. So everything from ensuring best  
23          practices in the way we serve kids, to hiring, making sure  
24          the right staff is hired, strategic planning for those  
25          programs, interfacing with ORR, interfacing with state

1           licensing entities, representing this part of the company  
2       at our board of directors meetings.

3           Q     I take it before then as general counsel most of  
4       your activities were focused on the legal operations of  
5       Southwest Key?

6           A     All of it was.

7           Q     100 percent?

8           A     Correct.

9           Q     And after 2006, then your position is as chief  
10      operation officer and a later change in title to vice  
11      president. How much of the percentage of your work was  
12      focused on the legal operations?

13          A     So the legal work that I do is probably less than  
14      5 percent currently and has been for the last ten years.

15          Q     Is it mostly just overseeing what the legal  
16      operations do?

17          A     It's not oversight. It's actual legal work. For  
18      instance, the termination of an employee, that kind of  
19      thing, employment law.

20          Q     Anything else?

21          A     Mostly it involves terminations from time to  
22      time. If the legal department gets busy, I might be asked  
23      to help. It's pretty rare.

24          Q     Can you think of anything else that falls within  
25      that 5 percent?

1           A       Okay.

2           Q       The unaccompanied minors in the Southwest Key  
3 facilities and how the facilities are run. And I take it  
4 as to the three facilities she is in charge of, she is  
5 qualified to testify as to that?

6           A       Yes.

7           Q       You have been designated to testify about the  
8 operation of Southwest Key facilities and the lives of the  
9 kids in the Southwest Key facilities.

10          A       Yes.

11          Q       And you're obviously qualified to testify about  
12 that?

13          A       Yes.

14          MS. CRISTOL-DEMAN: I'm just going to make one  
15 objection or caveat, which is we did serve objections to  
16 the notice, and I know that some of the notice topics were  
17 actually modified. So just subject to our objections and  
18 the modifications that were made by the agreement of  
19 counsel, yes, she is deemed the person -- been deemed the  
20 person to testify about those topics.

21          MR. RUBIN: And I have those objections if we need to  
22 refer to them at all. Okay?

23          MS. CRISTOL-DEMAN: Great.

24 BY MR. RUBIN:

25          Q       As to those three facilities, is she as qualified

1 as you to testify about the operation of them and the  
2 lives of kids that are unaccompanied minors in those three  
3 facilities?

4 MS. CRISTOL-DEMAN: Objection. The question is  
5 overbroad. Vague and ambiguous. Might call for  
6 speculation too.

7 THE WITNESS: I would think so.

8 BY MR. RUBIN:

9 Q As to the San Diego facilities, is she qualified  
10 to testify about Southwest Key's procedures and policies?

11 MS. CRISTOL-DEMAN: Objection. Overbroad.

12 THE WITNESS: Yes.

13 BY MR. RUBIN:

14 Q What about the ORR's policies and procedures as  
15 they relate to those three facilities?

16 A Yes.

17 Q When I speak of ORR, do you know what I'm  
18 speaking of?

19 A The Office of Refugee Resettlement.

20 Q And I take it as to the San Diego facilities, she  
21 would be as qualified to testify about those topics as  
22 you?

23 MS. CRISTOL-DEMAN: Objection. Overbroad. Vague and  
24 ambiguous. Calls for speculation.

25 THE WITNESS: Yes.

1 BY MR. RUBIN:

2 Q Ismael Avilez, if I asked the same questions as  
3 to Ismael Avilez, would your answers still be yes on  
4 those?

5 MS. CRISTOL-DEMAN: Same objections.

6 THE WITNESS: Not for the San Diego programs.

7 BY MR. RUBIN:

8 Q As to what programs?

9 A The programs that he oversees.

10 Q Which were?

11 A El Paso, San Antonio and Pleasant Hill,  
12 California.

13 Q In 2014?

14 A Oh, over his own program in El Cajon, yes.

15 Q So as to all of those programs, he would be as  
16 qualified to testify as you about the operations of the  
17 Southwest Key facilities?

18 MS. CRISTOL-DEMAN: Objection. Overbroad. Vague and  
19 ambiguous.

20 THE WITNESS: Yes.

21 BY MR. RUBIN:

22 Q And Southwest Key's policies and procedures as to  
23 those programs?

24 MS. CRISTOL-DEMAN: Same objections.

25 THE WITNESS: Yes.

1 MS. CRISTOL-DEMAN: Objection. Vague as to time.

2 BY MR. RUBIN:

3 Q Well, currently.

4 A For this fiscal year, it's 35 days.

5 Q Do you know what it was in 2014?

6 A My recollection it was, I believe, about 27 days.

7 Q And what causes them to end their stay at your  
8 facility?

9 A So a couple of things can happen. One, they are  
10 unified with a family member or a friend of the family in  
11 the community, in the United States. Or they may be  
12 repatriated back to their country of origin, or they may  
13 go to foster care, or they can age out of our system.

14 Q Okay. And they age out at age 18?

15 A That's right.

16 Q If they age out, what happens to them?

17 A They go to an adult immigration detention  
18 facility.

19 Q Where would that be?

20 A I don't know, sir. Just depends on each case.

21 Q Now, in a given year, say since October 2015, how  
22 many of the unaccompanied alien children aged out and went  
23 to an adult detention facility?

24 A I don't know off the top of my head.

25 Q Could you say in terms of whether it was over

1 1,000?

2 A I couldn't say. What I can say it's a pretty  
3 small amount compared to our reunifications. Those are  
4 the vast majority -- that's the way most of the children  
5 leave our shelters is through the reunification process.

6 Q Reunification is a reunification of a family --

7 A Or friend of family.

8 Q -- member or friend of family here in the United  
9 States?

10 A That's correct.

11 Q And then custody would be transferred to that  
12 family or friend of family at that point?

13 A Yes, sir.

14 Q And I take it that there would be custodial  
15 obligations on the part of that family or friend of family  
16 that Southwest Key was performing previously?

17 A When the children were in our shelter?

18 Q Yes.

19 A Yes, sir. We would take care of all of the  
20 children's needs when they're with us.

21 Q Now, when a child ages out, how does the transfer  
22 occur from your Southwest Key facility to the adult  
23 detention facility?

24 A So I have never personally been involved in an  
25 age out, but my understanding is that ICE comes to pick

1           them up and then takes them to one of their detention  
2           facilities.

3           Q      ICE is who?

4           A      Immigration and Customs Enforcement.

5           Q      I think that's correct.

6           A      Thank you. I passed the test.

7           Q      That's an arm of the federal government, correct?

8           A      That's correct, it's a branch of the Department  
9           of Homeland Security.

10          Q      When children arrive at your facility, they come  
11         in the custody of ICE at that time?

12          A      So again, I've never been there when they have  
13         arrived, but my understanding is that the border patrol  
14         brings them, which is -- that's okay.

15          Q      The border patrol, describe what or who the  
16         border patrol is.

17          MS. CRISTOL-DEMAN: I'll object to the extent it calls  
18         for speculation. It calls for legal conclusion. It's  
19         probably outside of the scope of the notice.

20           You can answer if you know.

21          THE WITNESS: I really don't know. They're part of  
22         the Department of Homeland Security is what I can say.

23          BY MR. RUBIN:

24          Q      Again, an arm of the federal government?

25          A      Yes, sir.

1 Q A policing arm of the federal government?

2 A Correct.

3 Q And those children that age out and go to an  
4 adult detention facility, are you aware of any of the  
5 circumstances of the transfer or how that occurs, other  
6 than that ICE comes to get them?

7 A No, sir.

8 Q Do you have any knowledge of any of the adult  
9 detention facilities that any of these children are  
10 transferred to after they leave your Southwest Key  
11 facility?

12 A No, I do not.

13 Q So you don't know if it's in another state, if  
14 it's nearby, anything like that?

15 A I don't.

16 Q And you don't track these children after they  
17 leave Southwest Key facilities and go to an adult  
18 detention facility?

19 A We do not.

20 Q Southwest Key does not run any adult detention  
21 facilities, I take it?

22 A No, sir.

23 Q So you don't have any experience with that?

24 A No, sir. Well, who, Southwest Key? Right. I'm  
25 sorry. We do not.

1 and that's pretty much it.

2 Q Does the federal government, ICE or ORR or any  
3 other branch of the federal government participate in the  
4 transfer of custody?

5 A Not in the moment that the transfer is happening.  
6 They approve the transfer, ORR does.

7 Q But they don't have any personnel on-site present  
8 at that transfer?

9 A No, sir.

10 Q Does the transfer occur at the Southwest Key  
11 facility?

12 A Very rarely.

13 Q Where does it occur?

14 A Typically at the airport. So typically we would  
15 fly a child from our shelter to wherever the parent lives,  
16 and that's where it occurs.

17 Q Okay. And when you say "we would fly the child  
18 from our shelter to wherever" the child's family, parent  
19 or friend lives, do you mean that you accompany the child?

20 A One of our staff members. So, yes, typically.  
21 As the years have progressed -- we used to fly every child  
22 at one point, but now those rules have changed back and  
23 forth. So now if the child is over a certain age ORR may  
24 allow them to fly alone. But if they're under a certain  
25 age --

1       escorted off and does not release that child to anybody  
2       except who the paperwork designates to. This person, that  
3       person has to present their ID, which is the parent.

4           So we pay for the special -- or we don't pay for  
5       it; the family pays for that special designation, and the  
6       family pays for the plane.

7       Q     So if they're going to be unaccompanied, that is  
8       the procedure that is followed?

9       A     Correct.

10      Q     I take it somebody from Southwest Key would be  
11       with the child until they are placed on the plane where  
12       they now have that procedure that somebody from the  
13       airlines has to get a signature before that child is  
14       released to anybody else?

15      A     That's correct.

16      Q     And then when the signature is produced, somebody  
17       else comes who identifies themselves as the person to pick  
18       up that child pursuant to the documents that have been  
19       provided, they have to sign, and then they can take  
20       custody of the child?

21      A     That's right.

22      Q     What about when a child is -- an unaccompanied  
23       alien child is transferred back to their country of  
24       origin, what is the procedure for that?

25      A     I can speak in general terms. Again, I've never

1 witnessed a repatriation take place, but it would begin  
2 with an order of removal from an immigration judge, and  
3 then our program works with the consulate of that country  
4 of origin to set up a flight for them to return. I'm  
5 unclear as -- I don't know if our personnel -- our  
6 Southwest Key personnel takes them to the airport to get  
7 on the flight, or if the consulate comes to pick up the  
8 child. I don't know that detail. But I do know that  
9 Southwest Key worked with the consulate, and they set up  
10 the flights for the children.

11 Q When this happens, is that a voluntary transfer?  
12 Is this something that is chosen by the child?

13 A It could be a voluntary departure. A child could  
14 ask for voluntary departure, or the judge could say -- a  
15 child could pursue some sort of immigration relief and get  
16 denied and the judge orders them removed.

17 Q So in that instance, it would be involuntary?

18 A Um-hum.

19 MS. CRISTOL-DEMAN: Is that a "yes"?

20 THE WITNESS: Yes, sir.

21 BY MR. RUBIN:

22 Q They're not allowed then to stay in the United  
23 States?

24 A Involuntarily, no, sir. If they are ordered  
25 removed, they're not allowed to stay in the United States.

1 Q So sometimes they ask you for more beds --

2 A Um-hum.

3 Q -- saying that they know they have an increasing  
4 need, so they ask you --

5 A Right.

6 Q -- and sometimes you're anticipating their needs,  
7 so you start looking proactively --

8 A That's correct.

9 Q -- for facilities?

10 MS. CRISTOL-DEMAN: Remember, let him finish;  
11 otherwise, there will be lots of interruptions in the  
12 transcript.

13 THE WITNESS: Got it.

14 MS. CRISTOL-DEMAN: It just gets messy.

15 BY MR. RUBIN:

16 Q In 2014 when you started looking in Escondido for  
17 a facility, which of the two situations did that  
18 represent?

19 A The second. ORR asked us to look for facilities.

20 Q We'll get into that in a little bit more detail  
21 later on. Okay?

22 Now, looking again at your chart, Exhibit 2,  
23 looking at after that September 2010 blip of a loss of 46  
24 beds, beds seem to increase until we get to October of  
25 2014 through September 2015 --

1           A     Um-hum.

2           Q     -- and then beds decreased by 567. Do you see  
3 that?

4           A     I do.

5           Q     Now, what was the cause for that decrease in the  
6 number of beds that changed from prior years?

7           A     So there was two primary causes. One was there  
8 was no need for what we call licensed -- variance through  
9 licensing in Texas. I can explain that if you would like  
10 me to.

11          Q     Yes.

12          A     So the state of Texas allows us to increase our  
13 licensed bed capacity at our shelters when there is a  
14 pressing humanitarian need to do so. In that fiscal year,  
15 2015, there were no variance beds needed. So that 567  
16 represents not having those beds.

17                 The other part of the equation is that we had  
18 a -- we have a program in downtown Phoenix, Casa Phoenix,  
19 that is licensed for 420 beds. That fiscal year they  
20 asked us to only have 50 beds because at that time they  
21 didn't need the rest, but we -- so let me take it back.

22                 They asked us to have 50 beds during one part of  
23 the year and then were going to be prepared to be a surge  
24 site to go up to the 420.

25          Q     So the number of children decreased dramatically

1 during that period of time --

2 A Coming into --

3 Q -- that came into --

4 MS. CRISTOL-DEMAN: Objection. The question is vague  
5 and ambiguous.

6 MR. RUBIN: It is. Let me redo that one. Okay?

7 Thank you.

8 Q When it says beds increased, or when they're in  
9 parentheses they decreased, does that mean that you were  
10 not authorized to have the beds?

11 A It means that at the beginning of the fiscal year  
12 of 2015 we had 567 less beds than ORR purchased, quote  
13 unquote, from Southwest Key starting the year.

14 Q So the beds didn't disappear; they might have  
15 physically been present there, but they weren't on the ORR  
16 list as ones they were paying for?

17 A That's correct. We had the same number of  
18 programs going into fiscal year 2015 that we had in 2014.

19 Q So they were essentially empty beds?

20 A That is correct.

21 Q Now, was it your understanding that it was  
22 because ORR didn't have the demand to fill those beds so  
23 they didn't want to pay for them?

24 MS. CRISTOL-DEMAN: Objection. Calls for speculation.

25 THE WITNESS: So that's my understanding. The

1 variances weren't needed. And so that took up part of  
2 those beds. And then, yes, there just wasn't a need for  
3 them.

4 BY MR. RUBIN:

5 Q That ORR had? Okay. The demand wasn't there?

6 A Yes, sir.

7 Q Now, did Southwest Key attempt to negotiate with  
8 ORR to try to increase the number of beds they were paying  
9 for during that period?

10 A Not that I recollect.

11 Q Okay. So if they say we're going to decrease the  
12 beds we're paying for so you're going to have empty beds,  
13 Southwest Key just accepts that and doesn't try to  
14 persuade ORR to change their mind?

15 A Part of it is not within ORR's purview. The  
16 licensed to variance beds are an exception that the State  
17 of Texas grants us. They're extra beds. So going back to  
18 what I said, what we are concerned about is do we get to  
19 keep every program moving forward.

20 We did get to keep every program. If ORR had  
21 said there is no need for beds and we're going to cut a  
22 program and close it down, then we would fight very  
23 strongly to keep that program open, but that didn't  
24 happen.

25 Q When you say "program," you mean a facility?

1 beds, do they first go to a competitor to see if they have  
2 licensed beds available rather than trying to have you use  
3 the extra powers in Texas to provide beds beyond the  
4 licensed amount?

5 MS. CRISTOL-DEMAN: Objection. Calls for speculation.

6 THE WITNESS: I can't say what ORR does. But what I  
7 can tell you is that from what I have been told what they  
8 do, they are tracking their beds nationwide, and the only  
9 reason we would be requested to ask for a variance is  
10 because they're at capacity nationwide or they're getting  
11 to capacity nationwide.

12 BY MR. RUBIN:

13 Q You refer to "capacity nationwide." Is it fair  
14 to say that ORR assesses their demand for beds in terms of  
15 their nationwide needs as opposed to regionwide needs?

16 MS. CRISTOL-DEMAN: Objection. Calls for speculation.

17 THE WITNESS: I don't know how they do that.

18 BY MR. RUBIN:

19 Q You mentioned that ORR may come to you and say  
20 the need for beds is increasing, we have an increasing  
21 number of unaccompanied alien children that we have to  
22 accommodate. When they do that, do they tell you where  
23 they need those beds?

24 A No, they do not.

25 Q They just say we need capacity somewhere in the

1       United States, can you provide it?

2           A     That's my experience with them.

3           Q     So it's your choice where you provide it?

4           A     That is correct.

5           Q     You can provide it in Texas as well as Orange  
6 County or Escondido if you wanted to as far as ORR is  
7 concerned?

8           A     That's correct.

9           Q     So where you provide it is purely a matter of  
10 choice of Southwest Key?

11          MS. CRISTOL-DEMAN: I'm going to object to the  
12 question. It's vague and ambiguous. Maybe argumentative.

13          THE WITNESS: It has to be approved. So we get to put  
14 any proposal that we want in front of ORR, and they get to  
15 decide if they want to buy it.

16          BY MR. RUBIN:

17           Q     Okay. As part of their approval process, is  
18 their approval process primarily one of whether the  
19 facility is adequate as opposed to is this in the right  
20 geographical area?

21          MS. CRISTOL-DEMAN: Objection. Calls for speculation.

22          THE WITNESS: Yeah, I'm not sure what their criteria  
23 is. I know they ask us for the budgets and they ask us  
24 for photos of the facility and --

25          BY MR. RUBIN:

1           Q     Okay. But you go through a lot of trouble --  
2 once they say we have a need for more facilities, you go  
3 through a lot of trouble to find a facility that you think  
4 might be adequate, correct?

5           A     That's correct.

6           Q     And I assume that you would not go to an area  
7 that you think would not be suitable for ORR since you're  
8 going through the trouble to locate a facility?

9           A     Quite honestly, we don't evaluate it that way.  
10          We evaluate whether or not it makes sense from us -- for  
11 us on an operational level to put a program there.

12          Q     Okay. So it's basically the location is  
13 determined primarily by Southwest Key, though ultimately  
14 has to be approved by ORR?

15          A     That's correct.

16          Q     Okay. And as far as you're concerned, they're  
17 just as likely to approve a Texas location as an Escondido  
18 or San Diego location as long as it's otherwise suitable?

19          MS. CRISTOL-DEMAN: Objection. Calls for speculation.

20          THE WITNESS: I would assume so because they approved  
21 the Escondido location, and they have also approved Texas  
22 locations.

23          BY MR. RUBIN:

24          Q     You didn't go to Escondido to find a location in  
25 2014 because ORR was looking for a Southern California

1 location?

2 A No, sir.

3 Q You did it because that would have been in  
4 Southwest Key's view a good place to locate a facility,  
5 correct --

6 A That's correct.

7 Q -- from its own operational point of view?

8 A That's correct.

9 Q Not from the ORR's point of view?

10 A That's correct.

11 Q Okay. So if for some reason you found you  
12 couldn't go in Escondido as far as a Southwest Key  
13 facility, and you had a location in Texas as an alternate,  
14 that could serve as well from ORR's perspective?

15 A I didn't understand the question.

16 Q From ORR's perspective, if you started looking at  
17 Escondido and you found that that wasn't a suitable  
18 location for some reason, from ORR's perspective, you  
19 could look in Texas and it would suit as well, as long as  
20 it's otherwise proper?

21 MS. CRISTOL-DEMAN: I'm going to object to the  
22 question as vague and ambiguous. Calling for speculation,  
23 and it's an incomplete hypothetical.

24 THE WITNESS: I would assume so.

25 BY MR. RUBIN:

1           Q     Now, is there a bid process that occurs with ORR?  
2     When they indicate that there is a demand for more beds,  
3     how do companies such as Southwest Key respond to that?  
4     Is there some kind of competitive process to fill that  
5     need, or is it done by some different process?

6           A     During the time of influx?

7           Q     Yes.

8           A     There is not necessarily -- I can give you a  
9     concrete example. For instance, in reference to the case  
10    at hand, in 2013, at the end of 2013 ORR had a conference  
11    call with all of its providers asking for increased bed  
12    capacity, and asking for proposals from whoever wanted to  
13    put it in. So in that way, I guess it's competitive. It  
14    was an open call for proposals. And that's how that got  
15    started.

16               In other years they have asked us as a current  
17    vendor do we have the capacity to bring on a new program.  
18    I don't know if they have also asked other vendors. But  
19    it was a phone call to us, "Do you have capacity to open  
20    new programs?"

21           Q     Okay. When you indicate they asked you, "Do you  
22    have capacity to open new programs?" is this something  
23    that is done in writing, or is it just like phone calls,  
24    or how does that occur?

25           A     Mostly it's phone calls.

1 testified to that.

2 THE WITNESS: Is your question did we open up any  
3 facilities between October 2014 and September 2015?

4 BY MR. RUBIN:

5 Q Let's start with that, yeah.

6 A No, not that I -- give me a second, I'm trying to  
7 think in my mind. Not that I recollect, no, we didn't.

8 Q Did they authorize any new facilities during that  
9 period of time?

10 A No, sir.

11 Q Yet you feel though the demand was decreasing  
12 that ORR had, they would have paid for 96 more beds in  
13 Escondido if you had permits to open that up in October  
14 2014?

15 A I strongly feel that way because that's what they  
16 did with all of our programs with the exception of Casa  
17 Phoenix.

18 Q Besides what you already testified to, is there  
19 any other information that would support that belief that  
20 you have?

21 A Well, no, because you're talking about a  
22 hypothetical situation. Other than we gave you -- you see  
23 the budgeted amounts, I mean, we've turned over discovery  
24 in terms of what capacity we had in 2013, 2014, 2015, and  
25 as it shows you, since we started running the programs, we

1 of the unaccompanied alien children program?

2 A That's right.

3 Q What about the unaccompanied alien children  
4 program, besides you and Geraldo, anybody else that  
5 regularly communicates with the federal government?

6 A From Southwest Key?

7 Q Yes.

8 A Lots of people do.

9 Q Okay.

10 A So Fred, members of Fred's team, my executive  
11 management team contacts and works closely with some of  
12 ORR's representatives on policy issues. All of the  
13 program directors in the field and assistant program  
14 directors have regular contact with the federal  
15 government, even like department heads, like lead case  
16 managers, lead clinicians would be staffing maybe more  
17 complex cases with the federal field specialist.

18 Q So if I limited it to location of facilities,  
19 would that pretty much be limited to you and Geraldo?

20 A And then Fred with the budgets.

21 Q Okay. Has ORR ever told Southwest Key that they  
22 need a facility in a specific city?

23 A I don't recollect that.

24 Q Specific county?

25 A Not that way, no. I mean, they have brought

1 facilities forward to us of which they've asked us to  
2 consider operating, and we said no for different reasons.  
3 But they've -- I don't recollect them ever saying "we want  
4 a facility in X city in X state."

5 Q Okay. Give me an example of one that you said no  
6 for some reason.

7 A They found -- during the summer of 2014 they  
8 found a facility in -- I believe it was in Colorado  
9 Springs, and we just didn't think it was a good place for  
10 kids.

11 Q So they located it?

12 A It was a federally owned government building.

13 Q Okay. How many beds would that --

14 A I have no idea. It was an office building, and  
15 it needed like work and conversion.

16 Q Anybody else take a look at it, any of your  
17 competitors that you know?

18 A I would have imagined they would have asked  
19 several other folks. I don't know.

20 Q Do you know if it became a facility at some  
21 point?

22 A It did not.

23 Q Once you identify a potential facility -- well,  
24 let me back up and just ask a more general question.

25 Can you describe the process that you go through

1 than their policies are minimal. And so, yes, to a  
2 certain extent they do, but we enhance those policies by  
3 adding best practice, our own policies, our own  
4 procedures. So, yes, they dictate the bare minimum and  
5 then we go from there.

6 BY MR. RUBIN:

7 Q Well, for instance, say a child runs away -- does  
8 that ever happen at a Southwest Key facility?

9 A It does.

10 Q And do their policies indicate what you do in  
11 that circumstance?

12 A They indicate at a minimal level what we need to  
13 do.

14 Q What do they say?

15 A That we need to notify them. We need to submit  
16 an SIR and notify the local authorities.

17 Q The police?

18 A Sure.

19 Q So the police then apprehends the child and  
20 brings the child back into the custody of either Southwest  
21 Key or the federal government, correct?

22 A Correct.

23 Q Okay. And they have policies on what kind of  
24 touching can occur with a child.

25 A Basic, yes.

1           that their requirements are met?

2           A     That is correct.

3           Q     And you can be stricter than their requirements,  
4       but you can't be more lax than their requirements?

5           A     That is correct.

6           Q     And their monitoring occurs how often?

7           A     That's up to them, and it's just based on a  
8       schedule of which I have no knowledge. I don't know how  
9       they put together their monitoring schedule.

10          Q     Okay. Does somebody come out at least once a  
11       month?

12          A     So their federal field specialists, the locals  
13       are there weekly.

14          Q     Weekly?

15          A     Oh, yes, and multiple times a week, depending on  
16       the program and how many federal field specialists are in  
17       an area. The monitoring team comes out maybe once a year,  
18       maybe once every other year.

19          Q     Okay. The team comes out once a year, once every  
20       other year, but their specialists are there weekly?

21          A     Yes, typically weekly.

22          Q     What are they monitoring?

23          A     Well, they participate in case staffing, so  
24       they're monitoring case files, they're monitoring the  
25       progress of the child in the program, or are they moving

1 STATE OF \_\_\_\_\_ )  
2 ) ss.  
COUNTY OF \_\_\_\_\_ )  
3  
4  
5  
6  
7  
8

I, the undersigned, say that I have read the foregoing deposition, and I declare, under penalty of perjury under the laws of the State of California, that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, at \_\_\_\_\_.

ALEXIA RODRIGUEZ  
Volume 1 - PMK 30(b)(6)

1

2

3 I, the undersigned, a Certified Shorthand Reporter of  
4 the State of California, do hereby certify:

5 That the foregoing proceedings were taken before me at  
6 the time and place herein set forth; that any witnesses in  
7 the foregoing proceedings, prior to testifying, were  
8 placed under oath; that a verbatim record of the  
9 proceedings was made by me using machine shorthand which  
10 was thereafter transcribed under my direction; further,  
11 that the foregoing is an accurate transcription thereof.

12 I further certify that I am neither financially  
13 interested in the action nor a relative or employee of any  
14 attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date subscribed my  
16 name.

17

18 Dated: 7/15/16

19

20

21 LINDA SILVER RYAN  
CSR No. 9915

22

23

24

25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SOUTHWEST KEY PROGRAMS, INC., )  
                                    )  
Plaintiff,                      )  
                                    )  
vs.                              ) No. 3:15-cv-0115-H(BLM)  
                                    )  
CITY OF ESCONDIDO,             )  
                                    )  
Defendants.                    )  
\_\_\_\_\_  
                                    )

DEPOSITION OF ALEXIA RODRIGUEZ

San Diego, California

Wednesday, June 29, 2016

Volume 2 - Individual Capacity

Reported by:  
LINDA SILVER RYAN  
CSR No. 9915  
JOB No. 12223

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF CALIFORNIA  
3  
4     SOUTHWEST KEY PROGRAMS, INC.,       )  
5    )  
6                   Plaintiff,                )  
7    )  
8     vs.                                      ) No. 3:15-cv-0115-H(BLM)  
9    )  
10    )  
11                   CITY OF ESCONDIDO,        )  
12    )  
13    )  
14                   Defendants.                )  
15    )  
16    )  
17    )  
18    )  
19    )  
20    )  
21    )  
22    )  
23    )  
24    )  
25    )

15                   Deposition of ALEXIA RODRIGUEZ, Vol. 2,  
16                   taken on behalf of Defendants, at 4401  
17                   Eastgate Mall, San Diego, California,  
18                   beginning at 9:17 a.m. and ending at 2:36  
19                   p.m. on Wednesday, June 29, 2016, before  
20                   LINDA SILVER RYAN, Certified Shorthand  
21                   Reporter No. 9915.

22  
23  
24  
25

1 APPEARANCES:

2

3 For Plaintiff:

4           ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES  
5           BY: LIZA CRISTOL-DEMAN, ESQ., ESQ.  
6           P.O. Box 686  
7           San Diego, California 92138-7131  
8           (650) 870-0141

9

For Defendant:

10           RUTAN & TUCKER, LLP  
11           Attorneys at Law  
12           BY: ALAN B. FENSTERMACHER, ESQ.  
13           611 Anton Boulevard  
14           Suite 1400  
15           Costa Mesa, California 92626  
16           (714) 641-5100

17

18

19

20

21

22

23

24

25

1 please let me know.

2 A Okay.

3 Q And there is no reason today that you wouldn't be  
4 able to accurately and completely testify, drugs or  
5 alcohol or any other reason?

6 A No.

7 Q And you're physically comfortable?

8 A I'm a little hot, but yes, other than that I'm  
9 okay.

10 Q That won't affect your testimony here today?

11 MS. CRISTOL-DEMAN: It might affect me, but I've asked  
12 them to turn down the air.

13 BY MR. FENSTERMACHER:

14 Q We covered very briefly yesterday, but at some  
15 point obviously you became involved in attempts by  
16 Southwest Key to open a new facility or shelter for what  
17 we've termed a UACs or UMs in the City of Escondido; is  
18 that right?

19 A Yes.

20 Q Was it Ismael Avilez that first brought you  
21 Escondido to put that on your radar, do you recall?

22 A It was either Ismael or Shane Harmon.

23 Q Regardless of who, which of those individuals  
24 brought the idea to your attention? Is it your  
25 understanding that it was Mr. Harmon that identified the

1 Escondido motel sites to bring that city on Southwest  
2 Key's radar?

3 A Yes, sir.

4 Q Was it your understanding -- when I refer to the  
5 motel sites, like we said yesterday, we're talking about  
6 Mt. Vernon, Quality Inn and Howard Johnson?

7 A Yes.

8 Q Was it your understanding that Mr. Harmon  
9 identified those motel sites because the City of  
10 Escondido, in his view, had a more permissive zoning  
11 ordinance than, say, other cities in San Diego County?

12 A Yes, sir.

13 Q And specifically, residential care facilities  
14 were permitted by right in a commercial zone?

15 A Yes, sir.

16 Q Which was not typical of other cities in the  
17 area?

18 A That was my understanding.

19 Q So, in other words, Mr. Harmon identified these  
20 motel sites because in his view and then in Southwest  
21 Key's view it was an option that Southwest Key could  
22 potentially open quickly?

23 A Yes, sir.

24 Q Because typically Southwest Key is not in the  
25 business of applying for discretionary permits; is that

1        permit, but what I can testify to is that it was a very  
2        easy process.

3        BY MR. FENSTERMACHER:

4           Q      Were you involved in any discussions with the  
5        City of El Cajon about how to classify Southwest Key's  
6        use?

7           A      No, sir, because we first opened up our program  
8        in El Cajon over 15 years ago. And so --

9           Q      It's whatever that --

10          A      Whatever that was.

11          Q      The same classification?

12          A      Yes.

13          Q      So you don't know, as you sit here today, what  
14        that classification was?

15          A      No, sir, I don't.

16          Q      Does transient housing ring a bell?

17          A      It doesn't.

18          MR. FENSTERMACHER: Mark this as Exhibit 32.

19                    (Defendant's Exhibit 32 was marked and  
20        is attached hereto.)

21          BY MR. FENSTERMACHER:

22          Q      The court reporter is handing you 32, Bates  
23        stamped SWK 20213. It looks like the chain starts here  
24        with an email from you on March 5th to Mr. Harmon. Do you  
25        see that?

1           A     I do.

2           Q     If you take a quick look at this email, it looks  
3 like you're talking about telling the city about how many  
4 beds Southwest Key is looking for; is that right?

5           A     Yes.

6           Q     In your second sentence you say:

7                 "However, don't want to scare the city  
8 by giving them a big number."

9           A     Right.

10          Q     Do you recall at some point being concerned about  
11 telling the city you were going to add too many beds and  
12 that might scare them off?

13          A     What I recollect is that they seemed to be --  
14 they were not in support of this already, at whatever  
15 point we were in, and what I recollect is I'm trying to  
16 phrase this sort of the right way or the way that I need  
17 to say it. Well, I mean we didn't want to scare them by  
18 saying we're going to have all of these kids because  
19 already they were at this point in time opposed --  
20 seemingly opposed to us having any kids. So I wanted to  
21 be honest with them, and I said we need to be honest, but  
22 I don't want it to be overwhelming.

23          Q     Understood. So at this point, the March 5th  
24 email, you certainly -- you personally had a feeling that  
25 the city was opposed to the project?

1           A     Yes, at this point.

2           Q     And at this point, as of March 5th, 2014, is it  
3     true that at a maximum Southwest Key was looking for 180  
4     or 190 beds in the city as opposed to 400 that we talked  
5     about earlier?

6           A     I don't remember if Del Diablo was already an  
7     option at this point. So what I remember is things  
8     materialized over the spring. Originally it was  
9     Mt. Vernon and Quality Inn or both or one or the other.  
10    And then at some point Howard Johnson came into the  
11    picture, which would have added approximately another 100  
12    beds. And at some point Del Diablo came into the picture,  
13    at which point, I don't know -- I know we started off  
14    originally with Mt. Vernon and Quality Inn as the two  
15    sites we were looking at.

16          Q     But if you take a look at Mr. Harmon's email just  
17    below yours he says:

18                 "Great answers. My only concern with one  
19     of the answers is we may have one major  
20     facility (two different leases on adjacent  
21     properties) making a 180-190 bed facility."

22                 Would you understand him to be referring to the  
23     Howard Johnson and Quality Inn combined?

24          A     That is.

25          Q     So at least at this point, since, again, you said

1       you were being honest with the city, it looked like that  
2       if you had opened that combined facility, that would have  
3       been it as far as the beds in Escondido?

4           A      I don't know.

5           Q      Is it a fair statement that -- well, let's go  
6       back to -- all the way back here in this packet to page  
7       20216.

8           A      Okay. 16, is that what you said?

9           Q      20216. So here there was a reference to "Great  
10       answers" I just talked about for Mr. Harmon, and it looks  
11       like here the answers that he is talking about are these  
12       answers to questions that were asked by city staff. Do  
13       you see that?

14          A      Yes, sir.

15          Q      It looks like -- this is an email from Bill  
16       Martin, but it appears that someone has sort of typed in  
17       that same email answers to his questions.

18          A      That looks like what happened, yes.

19          Q      Probably in a different color, but we just can't  
20       see it.

21          A      You can't see it.

22          Q      And then after someone took a cut at drafting  
23       these answers, it looks like you did if we look at 20215.

24          A      Okay.

25          Q      You forward those answers to Mr. Ferguson and

1       Mr. Harmon for their comment?

2           A     Yes, it looks like that, yes, right.

3           Q     At this point you had the feeling that perhaps  
4     the city was not very receptive to Southwest Key's use?

5           A     That's correct. Because what should have been a  
6     very simple process became immediately complicated from  
7     the beginning.

8           Q     Is it fair to say at this point on you were  
9     fairly careful with the information that you provided the  
10    city?

11          MS. CRISTOL-DEMAN: I'm going to object to the  
12    question as vague and ambiguous.

13          THE WITNESS: I wouldn't characterize it as careful.  
14    We wanted to be transparent, but we also wanted to be  
15    accurate.

16          BY MR. FENSTERMACHER:

17          Q     But I suppose, as you said in your very first  
18    email, you're trying to strike a balance between being  
19    honest and not scaring the city and phrasing your answers  
20    in a way that, while honest, are going to put Southwest  
21    Key's facilities in the best light; is that right?

22          MS. CRISTOL-DEMAN: Objection. Compound and complex.

23          THE WITNESS: I would say we didn't want to overwhelm  
24    the city.

25          MR. FENSTERMACHER: Okay.

1           Q     When you forwarded your answers to Mr. Ferguson  
2 and Mr. Harmon, was there anything in particular that you  
3 were looking for them to provide other than just their  
4 general advice?

5           A     Well, he was our attorney, and I wanted him -- he  
6 was part of the process.

7           Q     We looked a little bit earlier at 30, which was  
8 the business license.

9           A     Yes, sir.

10          Q     Without knowing which motel site that is for, I'd  
11 represent it is the Mt. Vernon, but it doesn't really  
12 matter. Let's say in February, late February of 2014 or  
13 early March, Southwest Key submitted a business license  
14 application for a motel site. And it was submitted at the  
15 counter and approved within a matter of days.

16          A     If it had been approved, is that what you're  
17 saying?

18          Q     Let's assume for this hypothetical it had been  
19 approved in just a matter of days. Do you know how  
20 quickly -- well, let's take Mt. Vernon -- Southwest Key  
21 could have become operational?

22          A     So my recollection is that Mt. Vernon needed more  
23 remodeling. It needed a commercial kitchen. It did not  
24 have the attached restaurant -- it actually did, but the  
25 restaurant -- that restaurant did not want to lease to us,

1 know.

2 Q And Mr. Ferguson specifically was hired, I  
3 assume, because of his relationships with the city and  
4 experience in the city?

5 A Right. And he is a land use attorney in  
6 Escondido. We specifically wanted someone in Escondido,  
7 not in San Diego or Vista or Encinitas.

8 Q Understood.

9 MR. FENSTERMACHER: I'm going to mark an exhibit here  
10 as Exhibit 36.

11 (Defendant's Exhibit 36 was marked and  
12 is attached hereto.)

13 BY MR. FENSTERMACHER:

14 Q Just staying on our discussion about maybe the  
15 differences in your use of "shelter" versus the city's.

16 A Okay.

17 Q This is an email from Mr. Avilez to you and  
18 Mr. Harmon and Mr. Ferguson. It looks like it's on  
19 April 10th. So it's after -- after the email we just  
20 looked at.

21 A Okay.

22 Q It looks like the "Subject" line is "Appeal  
23 Letter." So I assume that would refer to Southwest Key's  
24 appeal of the shelter determination?

25 A Can you point out, I'm sorry, where are you

1 talking about?

2 Q In the "Subject" line.

3 A Yes, I would imagine that's what it is  
4 referencing.

5 Q That would be fairly consistent with the early  
6 April time period by your recollection?

7 A That's right.

8 Q So Ismael is kind of talking about his opinions  
9 between the difference between a shelter and residential  
10 care facility. And, again, a residential care facility is  
11 the use that -- use category that Southwest Key was  
12 advocating that the city should determine its use to be?

13 A Correct, because that's what we're licensed as.

14 Q And that's the use that is permitted by right, at  
15 least at that time, in the commercial zone --

16 A Correct.

17 Q -- at the motel sites?

18 So here Mr. Avilez says:

19 "A shelter is a voluntary program,  
20 (Run away Shelter, Homeless Shelter, Domestic  
21 Violence Shelter) while a residential care  
22 facility is a program where there is a direct  
23 placement from a specific agency that has  
24 the custodial responsibility of the client.

25 In our case ORR makes the initial placement

1           of the minors while in other group homes it  
2       may be probation or Child Protective Services."

3           Would you agree, in general, with the distinction  
4       he is drawing here between, say, homeless shelters versus  
5       the type of shelter that Southwest Key runs?

6       MS. CRISTOL-DEMAN: Objection. That may call for a  
7       legal conclusion.

8       THE WITNESS: I would agree with that.

9       BY MR. FENSTERMACHER:

10      Q       And what he is saying is sort of voluntary versus  
11      involuntary program, if I'm going to oversimplify it; is  
12      that right?

13      A       That's correct.

14      Q       Because, again, a homeless person, if a  
15      homeless -- if a typical homeless transient person left a  
16      shelter, no one would call the police or try to go find  
17      them?

18      A       That's correct.

19      Q       Which, again, is not the case in Southwest Key's  
20      facilities?

21      A       Correct.

22      Q       And when a minor is apprehended by border patrol  
23      or ICE or whoever in the federal government apprehends  
24      them, they don't at any point say "I'd like to go stay at  
25      Southwest Key's facility," right?

1 A No, they don't.

2 Q Even if they did, it wouldn't matter?

3 A That's correct.

4 Q And once they're placed, would a minor be able to  
5 say, "I'd really prefer El Cajon because I like the area  
6 versus Texas"?

7 A Could the minor say that?

8 Q Right.

9 A I think the minor could say what they want to  
10 say.

11 Q Would it matter?

12 A It wouldn't matter. They wouldn't even know.

13 Q Right. I understand that in most cases a minor  
14 from a different country would probably not know the  
15 difference between the cities, of course?

16 A Right.

17 Q But in the instance where a minor had a  
18 preference on the city that minor wanted to reside in  
19 temporarily in at a Southwest Key facility, that wouldn't  
20 be taken into account for placement?

21 A No, sir.

22 Q Because ultimately ORR makes that decision?

23 A ORR and Washington, D. C. Their intakes make  
24 that decision.

25 Q And they're just involuntarily placed at one of

1 yours or a competitor's facility?

2 A That is correct, and I don't know how that  
3 process -- their intake process works, but they make those  
4 decisions.

5 Q One of the mysteries of the federal government?

6 A It is a giant mystery of which I would like to  
7 uncover.

8 Q Okay. Again, I know you said that you looked in  
9 the M-1 or shelter overlay zone and didn't see any  
10 available facilities. But you did understand, you  
11 personally and everyone at Southwest Key that you're aware  
12 of, that the shelter determination did not necessarily  
13 foreclose the possibility that Southwest Key could open a  
14 shelter in the City of Escondido?

15 A The shelter? Can you read that back?

16 Q I'll rephrase.

17 For example, had the city determined -- was it  
18 your understanding that if the city determined that  
19 Southwest Key's facilities were, say, an orphanage or a  
20 detention center, they wouldn't have been permitted  
21 anywhere in the city?

22 A So what I can say is that there were a couple of  
23 those classifications, I don't remember which, that were  
24 not permitted in the city. At one point we got one of  
25 those classifications, but I don't remember which one it

1 STATE OF \_\_\_\_\_ )  
2 ) ss.  
COUNTY OF \_\_\_\_\_ )  
3  
4  
5  
6  
7  
8

I, the undersigned, say that I have read the foregoing deposition, and I declare, under penalty of perjury under the laws of the State of California, that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
2016, at \_\_\_\_\_.

ALEXIA RODRIGUEZ  
Volume 2 - Personal Deposition

1

2

3 I, the undersigned, a Certified Shorthand Reporter of  
4 the State of California, do hereby certify:

5 That the foregoing proceedings were taken before me at  
6 the time and place herein set forth; that any witnesses in  
7 the foregoing proceedings, prior to testifying, were  
8 placed under oath; that a verbatim record of the  
9 proceedings was made by me using machine shorthand which  
10 was thereafter transcribed under my direction; further,  
11 that the foregoing is an accurate transcription thereof.

12 I further certify that I am neither financially  
13 interested in the action nor a relative or employee of any  
14 attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date subscribed my  
16 name.

17

18 Dated: 7/16/16

19  
20  
21 LINDA SILVER RYAN  
CSR No. 9915  
22  
23  
24  
25